

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GEORGE C. SWINYER Jr.,

Plaintiff,

v.

BALINDA COLE, et al.,

Defendants.

Case No. C05-5610 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATIONS AND
DISMISSING WASHINGTON
STATE DEPARTMENT OF
CORRECTIONS FROM THIS
ACTION WITH PREJUDICE AND
DISMISSING BALINDA COLE AND
NORTHERN RECEPTION CENTER
PAROLE BOARD OF
CALIFORNIA'S YOUTH
CORRECTIONAL FACILITY
WITHOUT PREJUDICE

The Magistrate Judge recommends that this 42 U.S.C. § 1983 Civil Rights action be dismissed with prejudice as to Defendant Washington State Department of Corrections as this defendant is not a person within the meaning of the Civil Rights Act and that Defendants Balinda Cole and the Northern Reception Center Parole Board of California's Youth Correctional Facility (hereafter, Facility) be dismissed without prejudice for lack of personal service. As detailed by The Magistrate Judge, the Department of Corrections is not a person subject to suit within the meaning of the Civil Rights Act. See, Will v. Michigan Dept. Of State Police, 491 U.S. 58 (1989).

1 Defendants Cole and the Facility were not personally served with summons and complaint and thus,
2 the Court lacks jurisdiction over these defendants.

3 Plaintiff has filed objection asserting that it is the Court's responsibility to effectuate service
4 on the defendants. The Magistrate Judge entered an Order Directing Service by US Marshal
5 Service. This Order required the Marshal Service to send by first class mail a copy of the complaint,
6 notice of lawsuit and request for waiver of personal service pursuant to Fed. R. Civ. P. 4(d). The
7 request for waiver of service was returned unexecuted as to both of the defendants. Thus, personal
8 service is required. Plaintiff's pro se status, alone, is not a justifiable excuse for defective service.
9 See, Daly-Murphy v. Winston, 837 F.2d 348 (9th Cir. 1987). Further, there is no evidence to support
10 Plaintiff's additional assertions and they are insufficient to convince this Court that these defendants
11 are subject to the Court's jurisdiction.

12 The Court, having reviewed the Report and Recommendation of the Hon. J. Kelly Arnold,
13 objections to the Report and Recommendation and the remaining record, does hereby find and
14 ORDER:

- 15 (1) The Court adopts the Report and Recommendation;
- 16 (2) Defendant Washington State Department of Corrections's Motion to Dismiss [Dkt #
17 20] is **GRANTED**, and the case dismissed as to this defendant with prejudice;
- 18 (3) Defendants Balinda Cole and the Northern Reception Center Parole Board of
19 California's Youth Correctional Facility are dismissed, without prejudice;
- 20 (4) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants,
21 and to the Hon. J. Kelly Arnold.

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23 DATED this 8th day of June, 2006.

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25 FRANKLIN D. BURGESS

UNITED STATES DISTRICT JUDGE

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